

BEFORE THE STATE BOARD OF EQUALIZATION.
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERNICE V. GROSSO)

Appearances:

For Appellant: William A. Johnson
Attorney at Law

For Respondent: Claudia K. Land
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of **Bernice V. Grosso** against a proposed assessment of additional personal income tax in the amount of \$183.52 for the year 1975. The amount at issue, plus interest, was satisfied by credit of an overpayment. Consequently, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal will be treated as an appeal from the denial of a claim for refund in the amount of \$200.95.

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The question before us is whether appellant may deduct her summer travel expenditures as educational expenses under Revenue and Taxation Code section 17202.

Appellant Bernice V. Grosso is a high school teacher. During 1975 she taught classes in U.S. Government and Sociology. She apparently was also required to be able to teach a World History course.

In the summer of 1975, appellant toured northern Europe. She traveled; first to London and then to Copenhagen. From Copenhagen she went to southern Sweden, where she visited an elementary school and a secondary school that had been developed by her grandfather. Appellant then returned to Copenhagen and boarded a cruise ship for a 13-day tour of several countries in the Baltic Sea region.

Five countries were visited during the cruise, and stops were made at six port cities. On board ship, a 45-minute lecture preceded the visit of each country on the tour. The lectures concerned the geographical aspects of the countries visited, and were given by a professor of Geography from DePaul University.

At the ship's stop at Leningrad, U.S.S.R., appellant took a special tour into Moscow and joined the ship later at its next stop, Helsinki, Finland. During the Moscow tour, appellant saw the Kremlin's Red Square, visited the Exhibitors of Economic Achievement, observed two wedding receptions in the area adjacent to her hotel's dining area, and noted generally that cathedrals and churches in Moscow had been restored. In addition, she remarked that some of her group saw such things as the Crown Jewels, and that the group as a whole attended a cultural performance consisting of an a cappella choir singing folk songs. She also found that the Russian people were able to purchase condominiums.

After the Moscow tour, appellant continued with the cruise until reaching Southampton, England. From there appellant traveled to London to do some sightseeing for a few days before returning home. Upon her return, appellant's school district granted her three units of credit toward the next higher salary level for her travel.

On her 1975 income tax return, appellant claimed a \$2,724.48 deduction for educational expenses incurred as a result of her European travel. Respondent disallowed the deduction, characterizing appellant's trip as a vacation, and therefore nondeductible,

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A protest hearing was held at which appellant made the additional claim that she could have received academic credit for the trip from DePaul University had she enrolled in that institution and written a paper. Her stated reason for not enrolling was that she believed the tuition expense to be unreasonable since she would have received the same salary credits with or without academic credit from DePaul University. Moreover, she stated that the paper requirement would have taken away from the time otherwise available for study and observation.

After due consideration, respondent reaffirmed the denial of appellant's refund claim. Appellant then appealed. Respondent has since decided to allow a deduction in the amount of \$53.48 for expenditures on film and development of pictures used in appellant's classroom.

Section 17202 of the Revenue and Taxation Code, which is substantially similar to section 162 of the Internal Revenue Code, allows for the deduction of all ordinary and necessary expenses paid or incurred by the taxpayer in carrying on any trade or business. Expenditures for education are considered to be deductible business expenses if they are undertaken primarily for the purpose of maintaining or improving skills required by the taxpayer in his employment, or meeting the express requirements imposed by the taxpayer's employer for the retention of the taxpayer's salary, status or employment. (Cal. Admin. Code, tit. 18, reg. 17202, subd. (e). 1/ & 2/) Expenditures made by a taxpayer for his education are not deductible if they are for education undertaken primarily for the purpose of fulfilling the general educational aspirations or other personal purposes of the taxpayer. (Cal. Admin. Code, tit. 18, reg. 17202,

1/ The federal regulations were liberalized in 1967 by eliminating the subjective "primary purpose" test and permitting a deduction for educational travel provided it has a direct relationship with the taxpayer's employment or other trade or business. (See Treas. Reg. § 1.162-5 (d) (1967); Krist v. Commissioner, 483 F.2d 1345, 1348 (2nd Cir. 1973).) However, during the year on appeal, the Franchise Tax Board had not followed the lead of the Internal Revenue Service, and had retained the "primary purpose" test.

2/ Repealer filed Feb. 21, 1979, effective 30 days thereafter (Register.79, No. 7).

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subd. (e)(2). ^{3/} Generally, a taxpayer's expenditures for travel as a form of education shall be considered as primarily personal in nature, and therefore not deductible. (Cal. Admin. Code, tit. 18, reg. 17202, subd. (e) (3). ^{4/})

In the instant case, appellant was not required to travel in order to retain her salary, status or employment. She therefore has the burden of establishing that the European trip was undertaken primarily to maintain or improve skills required in her employment, and that the cost of the trip therefore constituted an ordinary and necessary expense incurred in carrying on her profession. (Appeal of Robert C. and Joan E. Looney, Cal. St. Bd. of Equal., Aug. 30, 1967.) She must show that the major portion of her time while traveling was spent not on ordinary tourism, but on activities which were so uniquely tailored to strengthen her teaching abilities that the expenditures therefor are excepted from the general rule that educational travel is to be considered primarily personal in nature and therefore nondeductible.

Appellant contends that the above requirements have been satisfied, and in support thereof, emphasizes her school district's approval of the travel. She further claims that had she earned formal academic credit for the cruise, she would have been allowed to deduct her travel expenses and that to withhold deductibility on that basis is to allow form to govern substance. For the following reasons we find appellant's contentions to be unsupported.

Appellant is a teacher of Sociology, U.S. Government and perhaps World History. Undoubtedly, her first-hand acquaintance with other cultures and forms of government enhance her ability to present such material effectively to her classes. Nonetheless, the regulations cited and the case law, both state and federal, recognize that travel may be educational and yet not be deductible.. (Dennehy v. Commissioner, 309 F.2d 149 (6th Cir. 1962); Appeal of Richard T. and Helen P. Glycer, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of John H. Roy, Cal. St. Bd. of Equal., March 8, 1976; Appeal of Robert C. and Joan E. Looney, supra.)

^{3/} See footnote 2.

^{4/} See footnote 2.

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Appellant's itinerary consisted of a few days in London and several weeks visiting cities in northern Europe. In Sweden she inspected an area of her heritage where her grandfather and father had lived. While on the chartered tour, she visited the usual points of interest and was able to observe the people and culture for one or two days in each place visited. Throughout her travel, she failed to interview government officials, teachers or other experts in her field. The major portion of her time, therefore, was spent not in gathering specifically job-related information, but in general tourism.

This is particularly evident when certain Of the trip's aspects are examined in detail. For example, the lectures given on board ship concerned geography, which was not one of appellant's teaching subjects. Secondly, there were only five lectures given in the space of 13 days, and the lectures were only 45 minutes in length each. These factors, coupled with the availability of the lectures to all passengers, show that the lectures could only have been of the most general and cursory nature, designed merely to inform the general tourist on the cruise.

The special tour into Moscow is also worthy of closer scrutiny. We have already noted the activities that appellant pursued in Moscow. They were no different from those in which the average tourist would have engaged. In fact, appellant was accompanied by average tourists in these activities; This alone provides sufficient basis for characterizing the visit to Moscow as personal. However, an additional feature of this side trip highlights the personal nature even further. That feature is found in the fact that of the five days appellant states she spent in Russia, two of those days appear to have been spent traveling by train. Appellant's travel from Leningrad to Moscow and back to Helsinki was by train. The total distance of that rail travel is about 1,000 miles. It therefore appears that the rail travel accounted for a significant portion of the time appellant spent in Russia.

Furthermore, since the sea distance from Leningrad to Helsinki is only about 200 miles, it is evident a five-day tour into Russia could only be arranged at the expense of missing the city tours of Leningrad and Helsinki; An attendant consequence of missing the Helsinki tour is that appellant also missed the shipboard lecture on Finland, which lecture would have been given immediately prior to the ship's arrival at Helsinki.

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Adding these details to appellant's tourist-like activities'generally, it is clear that the primary purpose of appellant's trip was personal or, at best, to fulfill general educational aspirations. Neither purpose, however, provides a basis for making the trip expenses deductible. (Cal. Admin. Code, tit. 18, reg. 17202, subd. (e)(2); Appeal of John H. Roy, supra; Maude A. Schinnagel, ¶ 62,104 P-H Memo. T.C. (1962).)

The fact that appellant's school district approved the trip and granted her salary credits as a result does nothing to 'change the above conclusion. The district's actions are not determinative of the deductibility of the travel expenses. (Leo J. Roy, ¶ 69,115 P-H Memo. T.C. (1969).) The reasons for this are two-fold. First, there is no assurance that the school district considered whether appellant established the requisite primary purpose to maintain or sharpen skills required in her work. (Leo J. Roy, supra.) Second, neither the statute nor the regulations delegate to the taxpayer's employer the authority to determine deductibility. (Adelson v. 'United States, 342 F.2d 3.32 (9th Cir. 1965).)

In addition, there is no merit to appellant's claim that deductibility was withheld solely because she 'did not earn academic credit from DePaul University. Appellant's claim assumes that formal academic credit earned as a result of travel makes the cost of such travel deductible. That is not the case. The obtaining of academic credit may be important, but it is not determinative of deductibility. If the overall "primary purpose" test is not met, the fact that a taxpayer earns academic credit as a result of, or in the process of, traveling does not make the travel expenses deductible. (Maude A. Schinnagel, supra; Hier v. U.S., 13 Am. Fed. Tax R.2d 1043; Appeal of Robert C. and Joan E. Looney, supra.)

The overall inquiry, then, remains whether the appellant has shown that her 1975 summer travel expenditures were undertaken for the primary purpose of maintaining or improving skills required in her employment. On the basis of the foregoing, our holding is that she has failed to do so. Respondent's disallowance of appellant's travel expenditures therefore was proper.

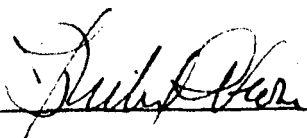
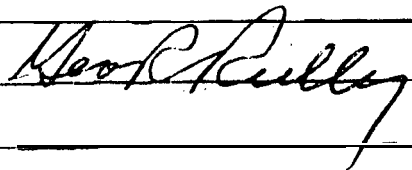
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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Bernice V. Grosso for a refund of personal income tax and interest in the amount of \$200.95 for the year 1975, be and the same is hereby modified to reflect the conceded deductibility of film expenses in the amount of \$53.48. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 1st day of August, 1980, by the State Board of Equalization.


_____, Chairman

_____, Member
_____, Member
_____, Member